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SUPREME COURT, U.S.

No. 81-2363

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

PENNHURST STATE SCHOOL AND HOSPITAL, et al.,

Petitioners

v.

TERRI LEE HALDERMAN, et al.,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

FOR RESPONDENTS

TERRI LEE HALDERMAN, ET AL.

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August 6, 1982

QUESTIONS PRESENTED

1. Whether certiorari should be granted where it is unlikely this Court will be able to reach the merits of the petition because

a) the District Court's termination of fines and purging of Defendants' contempt moots the case;

b) any remaining interest of the Defendants in the presently unspent portion of paid fines will likely be exhausted prior to decision in this case if certiorari is granted; and,

c) expiration of the statutory budget restriction at issue renders Petitioners' "question presented" of small importance.

2. Whether certiorari should be granted where objections raised by Petitioners were not decided in the courts below.

3. Whether certiorari should be granted where the Court of Appeals decision was clearly correct in that Petitioners may not disobey a federal court order and appeal a contempt finding where they had the opportunity to seek modification of a District Court's order pursuant to Fed.R.Civ. Pro. 60(b), where state law does not bar compliance with the federal court order.

4. Whether certiorari should be granted where the decision of the Third Circuit is not in conflict with the decisions of this Court in Maggio v. Zeitz, 333 U.S. 56 (1948), or the Second Circuit in NYSARC v. Carey, 631 F.2d 162 (2d Cir. 1980).

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I. STATEMENT OF THE CASE

This case involves the disruption of orderly review of a final judgement through bad faith disobedience of the judgement and defendants' failure to seek modification under Fed.R.Civ. Pro. 60(b).

The Court is no stranger to Petitioners' self-help attempt to circumvent the established procedures for modification of existing orders. The full Court, as well as Justices Brennan and Rehnquist, denied stays of the District Court order imposing a $10,000 a day conditional fine for continued noncompliance.

It is unlikely this Court will be able to reach the merits of the petition:

a. The case is moot. The 1981-1982 statutory budget restriction at issue has expired. The current law has no such restriction.

b. The case is also moot because on January 8, 1982, the District Court ended the fines and freed defendants from contempt.

c. Any remaining interest of the defendants in the unspent portion of the $1,200,000 paid in fines will soon evaporate; the current balance of $480,245 will likely be eliminated prior to decision in this case if certiorai is granted.

Pennhurst was originally filed in May, 1974, to bring an end to repressive, harmful and needless institutionalization of the mentally handicapped, under abominable conditions, due to an insufficient use of more appropriate community facilities. In March, 1978, the District Court order the Commonwealth to bear the cost of a master who would monitor the transition of Pennhurst residents into the community. Halderman v. Pennhurst State School and Hospital, 446 F.Supp. 1295 (E.D. Pa. 1978). For three years Petitioners complied with the District Court orders to make monthly payments.*

In 1981, Petitioners departed from past practice and instituted a calculated scheme to circumvent the judgement. The District Court found that Secretary O'Bannon demonstrated bad faith in her testimony before the House and Senate Appropriation Committees in which she importuned the state legislature to deny funding necessary monies to implement the order. Halderman v. Pennhurst State School and Hospital, 553 F. Supp. 631 (E.D. Pa. 1981). 35a, 37a. The legislature complied with Ms. O'Bannon's defiant risk taking approach and appropriated $35,000 to "shut down" the master. Petitioners relied on this provision of the now-expired 1981-82 budget as a justification for ceasing monthly payments.

The District Court found Petitioners in contempt of the June 4, 1981 and July 14, 1981 payment orders and imposed conditional civil fines totaling $10,000 for each day, after

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* The Commonwealth funded the Master in the absence of a specific line item appropriation during fiscal years 1978-79, 1979-80 and 1980-81.

September 2, 1981, that full payment was not made. 533 F.Supp. 631 (E.D. Pa. 1981),25a. The Third Circuit Court of Appeals denied a stay. On September 7, 1981, Justice William J. Brennan, acting as Circuit Justice, denied Petitioners' application for a stay. Petitioners resubmitted the issue to Justice Rehnquist, who denied a stay and, on a second application to him, referred the motion to the full Court, which denied the stay on October 5, 1981.

Pursuant to these denials, Petitioners paid $1,200,000 into a Court Registry in $10,000 per day civil fines. On January 8, 1982, the District Court purged Petitioners of contempt having secured sufficient funding for the master for the fiscal year 1981-82. 30a. On appeal, the Third Circuit affirmed the contempt order and coercive fine on February 26, 1982. 46a.* Petitioners' motion for rehearing was denied on March 23, 1981. 87a.**

Following the expiration of the 1981-82 budget, the present fiscal year's budget took effect on July 1, 1982. This budget evidenced a return to the prior practice of omission of a specific appropriation for the master and absence of any restrictive statutory language. The present budget erects no bar to compliance with the payment orders; in this respect, it is identical to the fiscal budget from 1979 to 1981 under which Petitioners funded the mater.

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* Halderman v. Pennhurst State School and Hospital, 673 F.2d 628 (3d Cir. 1978).

** Halderman v. Pennhurst State School and Hospital, 673 F.2d 645 (3d Cir. 1978).

II. REASONS FOR DENYING THE WRIT

A. Introduction

This case involves a party which ignored the proper procedural route of a Fed. R. Civ. Pro. 60(b) motion to modify a federal court order in light of a subsequent change in the law and instead, sought review by disobedience of the order and appeal of the contempt finding. On March 17, 1978, the District Court ordered Petitioners to fund the master. After several years of compliance, Petitioners withheld funds pursuant to the alleged limitations of the Pennsylvania 1981-82 budget. This budget expired on June 30, 1982 and was replaced by a bill which places no restrictions on compliance with the orders.

The Court should deny certiorari for the following reasons:

1. The statute on which Petitioners rely expired on June 30, 1982. The Question Presented became moot on July 1, 1982, when the new appropriations bill took effect.

2. The case is moot because petitioners were purged of contempt and there will soon be no fine fund.

3. Objections raised by Petitioners which were not decided in the courts below may not first be considered by the Court on certiorari.

4. Petitioners had the opportunity to modify the District Court order pursuant to a Fed. R. Civ. Pro. 60(b) motion. Where such an established orderly remedy is available, a party may not disobey the federal court order and appeal the contempt finding.

5. The Court of Appeals of the Second and Third Circuits are not in conflict on the issues presented.

6. Pennsylvania law supports the decisions below and does not bar compliance with the federal court orders.

Accordingly, the Court should deny the petition for certiorari.

B. The Statute Upon Which Petitioners Rely No Longer Is In Effect; Under New Law, the Question Presented Is Of Small Importance

Petitioners' "question presented," even if meritorious, became of quite small importance on July 1, 1982, when Pennsylvania's new budget became law and last year's budget expired. In the 1982-83 budget, the Pennsylvania Legislature returned to its previous practice of leaving the executive free to expend funds (as it had in 1978-1981) for the cost of the master. No prohibition on such spending is in the new law. As of July 1, 1982, Pennsylvania law can no longer be raised as an obstacle to compliance with the court-ordered payments.

The Court is required by Article III of the Constitution to limit its scope of review to existing cases or controversies. When subsequent developments moot the question presented, there is no present controversy. E.g., Flast v. Cohen, 392 U.S. 83 (1968). Pennsylvania's 1982-83 budget is such an intervening event.

This Court denies review of claims where intervening legislation renders moot the case or controversy. E.g., Hall v. Beals, 396 U.S. 45 (1969); Judgements are considered in light of existing state law, not state law as it stood when the judgements below were entered. Daffenderfer v. Central Baptist Church, 404 U.S. 412 (1972). As the practice is summarized in in Kremens:

> The fact that the Act was passed after the decision below does not save the named appellees' claim from mootness. There must be a live case or controversy before this Court, Sosna v. Iowa, 419 U.S. 393, 407, 42 LEd 2d 532, 95 S Ct 553 (1975), and we apply the law as it is now, not as it stood below.

431 U.S. at 128, 129.

Under Pennsylvania law at present, Petitioners are not restrained by an insufficient line item appropriation for the master or by any prohibitory language. This Court must apply the 1982-83 budget to the question presented and this intervening legislation renders unimportant petitioners alleged dilemma because there is no present case or controversy after July 1, 1982, this Court should deny certiorari.*

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* The "capable of repetition, yet evading review" exception to mootness is not applicable here for several reasons. First, there is no indication that the state legislature or the defendants seek confrontation with the federal courts. Second, this Court's review of the relief in Pennhurst at No. 81-2101, on certiorari will likely result in decision while the current budget is in effect. Third, the Petitioners are free to seek Rule 60(b) relief now or later.

C. The Case Is Moot; Petitioners Were Purged of Contempt.

On January 8, 1982, the District Court entered an order purging petitioners of contempt and ending the daily fine. 29a-43a (opinion), 44a-45a (order).

The fund created by the fines is now more than halved* and, by the time of any decision in this case if certiorari is granted, the fund will surely be exhausted.

The issue sought to be presented is moot.

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* As of July 12, 1982, the balance was $480,245, down from its original $1,200,000.

D. An Objection Not Decided In the Courts Below Should Not Be Considered By the Court On Certiorari.

Petitioners ask this Court to determine if the failure of the Pennsylvania Legislature to appropriate funds to comply with a District Court order is defense to a finding of civil contempt and coercive fines. This is an interesting question but one which should not be entertained because it was not decided in the courts below.

The court historically has limited the scope of its review to those issues which have been debated and decided in the lower courts. E.g., Wilson v. McNamee, 102 U.S. 572 (1880); Selover, Bates and Co. v. Walsh, 226 U.S. 112 (1912); Ramsey v. United Mine Workers, 401 U.S. 302 (1971). An issue is not reserved for certiorari simply by referring to it in the courts below. E.g., Hynes v. Grimes Packing Co., 337 U.S. 86 (1949).

Neither the District Court nor the Court of Appeals ruled on the issue sought to be presented. The District Court's contempt order was not based on any conflict between a state legislature and the federal court; it was based "solely upon" the defendants' "acts and statements directed toward the abrogation of the Court's Order." 20a. In the Court of Appeals, the alleged merits of Petitioners' defense were not reviewed; the Court squarely held that the issue must first be presented to the District Court in a Rule 60(b) motion for relief from judgement.

The issue of whether a change in Pennsylvania law requires modification of the underlying orders is addressed to this Court prematurely. Petitioners must first present their challenge in a Rule 60(b) motion before the District Court. The decision on such a motion may be appealed to the Third Circuit Court of Appeals pursuant to 28 U.S.C.§1292(a)(1). Only after the usual orderly process may the Petitioners ask this court to consider the merits of their defense.

E. The Decision Below Was Clearly Correct: A Party Which Has the Opportunity to Seek Modification of a Federal Court Order Pursuant To Rule 60(b) In Light Of A Change In the Law May Not Challenge the Order By Disobedience And Appeal Of A Contempt Finding

On June 4, 1981 and again on July 14, 1981, the District Court ordered the Commonwealth to make the usual periodic payments to defray the costs of the master pursuant to the March 17, 1978 order. Those orders were not appealed.

Petitioners refused to meet the payments, contending that the Pennsylvania 1981-82 budget, effective July 1, 1981 - June 30, 1982, relieved them of their obligation. The Court of Appeals did not address the merits and held that Petitioners' claim should have been raised on a Rule 60(b)(5) or (6) motion for relief from the relevant order. 68a. This holding was clearly correct.

Petitioners contend, with apparent seriousness, that the Court of Appeals unfairly surprised them by implementing the "novel procedural rule," Fed.R.Civ. Pro. 60(b). Petition at 14. The Third Circuit's application of Amended Rule 60(b), which became effective on March 19,1948, is neither unfair nor novel.

For more than a century, the Court has acknowledged that federal courts have the power to modify existing decrees in response to changes in the law. Pennsylvania v. Wheeling &

Belmont Bridge Co., 18 How. 421 (1855). In Wheeling, a bridge accross the Ohio River was held to obstruct navigation in conflict with Acts of Congress with regulated navigation. The Court ordered the illegal structure to be raised or removed. When a later Act of Congress declared the existing bridge to be lawful, the Court amended the prior decree to permit a new bridge to be erected at the same height. Id.

Justice Cardozo reaffirmed the Court's modification powers and explained its basis in the landmark case, United States v. Swift & Co., 286 U.S. 106 (1932). Swift & Co. sought modification of a consent decree enjoining the company from violating the Sherman Act on the grounds that modern market conditions rendered oppressive the ten year old decree. Justice Cardozo declared for the Court:

> We are not doubtful of the power of a court of equity to modify an injunction in adaptation to changed conditions though it was entered by consent....Power to modify the decree was reserved by its very terms, and so from the beginning went hand in hand with its restraints. If the reservation had been omitted, power there still would be by force of principles inherent in the jurisdiction of the chancery. A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need.

Id at 114.

The Court has reaffirmed the Swift principles in its liberal application of Rule 60(b). Justice Black reflected the majority opinion that Rule 60(b)(6) "vests power in courts adequate to enable them to vacate judgements whenever such action is appropriate to accomplish justice." Klapprott v.

United States, 335 U.S. 601, 614,615 (1949). In recent years, the Court has continued to recognize the importance of relief under the "well-established" Rule 60(b). E.g., Standard Oil Company of California v. United States, 429 U.S. 17 (1976); Pasadena City Bd. of Education v. Spangler, 427 U.S. 424, 437 (1976). In Pasadena, per Justice Rehnquist, the Court held that a District Court order should have been modified because it was too vague; however, until proper modification pursuant to Rule 60(b), the order remained in effect.*

The Third Circuit, in other cases, has adopted this Court's view of Rule 60(b). Judge Garth commented,"As Professor Moore has written, Rule 60(b)(6) 'is a grand reservoir of equitable power to do justice in a particular case.' 7 J. Moore, Federal Practice ¶60.27 [2] at 375 (2d ed. 1975)." Martinez-McBean v. Government of Virgin Islands, 562 F.2d 908, 911 (3d Cir. 1977). The Courts of Appeals may modify existing orders pursuant to Rule 60(b) where the moving party establishes sufficient cause for relief. Mayberry v. Maroney, 558 F.2d 1159 (3d Cir. 1977); Marshall v. Board of Ed., Bergenfield, N.J., 575 F.2d 417 (3d Cir. 1978).

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* Justice Rehnquist wrote:

> There is necessarily a counterpart to this well-established insistence that those who are subject to the commands of an injunctive order must obey those commands notwithstanding eminently reasonable and proper objection to the order, until it is modified or reversed. That counterpart is that when such persons heed this well-established rule and prosecute their remedy first by a motion to modify in the issuing court and the, failing there, by appeal of that court's denial of their motion, they are entitled in a proper case to obtain a definitive disposition of their objections.

427 U.S. at 439, 440.

The Federal Rules of Civil Procedure were established in part to provide for orderly review of valid judgements; circumvention of the Rules thwarts their purpose. The Third Circuit supports "the well established principle that a motion under Rule 60(b) may not be used as a substitute for appeal." Martinez-McBean v. Government of Virgin Islands, supra, 562 F.2d at 911, quoting In re Imperial '400' National, Inc., 391 F.2d 163, 172 (3d Cir. 1968); Marshall v. Board of Ed., Bergenfield, N.J., supra. Petitioners' refusal to follow proper relief procedures established by Congress, this Court and the Third Circuit conflicts with more than a century of accepted judicial practice.

Rule 60(b) applies where intervening law creates extraordinary circumstances which justify relief from an existing order. System Federation No.91 Railway Employee's Department, AFL-CIO v.Wright, 364 U.S. 642 (1961); Klapprott v. United States, supra. In System Federation No. 91, non-union employees obtained a district court order enjoining the railroad from employment discrimination at a time when the Railroad Labor Act barred a union shop. After the act was amended to permit union shops, the unions filed a 60(b) motion to modify the decree to reflect the new law. Justice Harlan wrote:

> There is also no dispute but that a sound judicial discretion may call for the modification of the term of an injunctive decree if the circumstances, whether of law or fact, obtaining at the time of its issuance have changed,or new ones have arisen....A balance must thus be struck between the policies of res judicata and the right of the court to

> apply modified measures to changed circumstances.

354 U.S. at 647, 648. Numerous federal cases hold that a change in law may justify modification of an outstanding decree.*

Relief pursuant to Rule 60(b)(6) may be provided upon a showing of "extraordinary" or "exceptional" circumstances. Stradley v. Cortez, 518 F.2d 488, 493 (3d Cir. 1975); Vechionne v. Wohlegemuth, 558 F.2d 150,159 (3d Cir. 1977), cert denied, 434 U.S. 943 (1977); Martinez-McBean v. Government of Virgin Islands, supra at 911; Mayberry v. Maroney, supra at 1163, Marshall v. Board of Ed., Bergenfield, N.J., supra at 425, 426. The court found such extraordinary circumstances in Klapprott, supra, where petitioner sought modification of a default judgement entered against him when he was physically incapable of attending his naturalization hearing because he was in jail, ill and indigent. Id. at 614.

Petitioners had ample opportunity to file a Rule 60(b) motion. The first payment order of which Petitioners were found in contempt was issued on June 4, 1981. Almost twelve weeks passed before petitioners were held in contempt on August 25,1981. At any time during that period, Petitioners could have moved before the District Court under Rule 60(b)(5) or (6) for relief.

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* E.g., Western Union Tel. Co. v. International Brotherhood, 133 F.2d 955 (7th Cir. 1943)(whether ordinary strikes are forbidden by the Sherman Act); Coca-Cola v. Standard Bottling Co., 138 F.2d 788 (10th Cir. 1943)(whether the use of the word "Cola" is a trademark infringement); McGrath v. Potash, 199 F.2d 166 (D.C. Cir. 1952)(whether passage of an act governing deportation hearings justified relief pursuant to Rule 60(b)(6) modifying an injunction against conduct of such hearing); Harrell v. Harder, 369 F.Supp 810 (D.C. D.Conn. 1974)(whether change in HEW regulations justified relief under 60(b)(5); Roberts v. St. Regis Paper Co., 653 F.2d 166 (5th Cir. 1981)(whether a change in decisional law supports modification of an injunction pursuant to 60(b)(5)).

At the least, Petitioners had eight weeks from the July 1 effective date of the 1981-82 budget in which to seek relief before the District Court had no choice but to hold them in contempt.

Preservation of our judicial system relies on the finality of judgements. Judgements must be obeyed until properly modified. Pasadena City Bd. of Education v. Spangler, supra, 427 U.S. at 439-440.

This Court has never condoned self-help in the form of contempt as an acceptable alternative to the established procedural remedy, Rule 60(b). The self-help approach adopted by Petitioners denied all parties a proper forum for questioning the appropriateness of the underlying orders and left the District Court with no alternative but a coercive contempt order to preserve the integrity of the law. Had Petitioners made a Rule 60(b) motion, the District Court could have considered their contentions in a proper, informed and orderly proceeding; an appeal of right pursuant to 28 U.S.C.§1292(a)(1) would lie had their motion been denied.

Petitioners may still file a Rule 60(b) motion for relief; the Court of Appeals invited them to do so. 72a. Until such time, this Court should refuse to consider the effect on the payment orders of the appropriations act in an appeal from a civil contempt order. By denying certiorari, this Court will reinforce the judicial standard of opposing self-help relief from a judgement where an established procedural method is available.

F. The Decision Of the Third Circuit Is Not In Conflict With the Decisions Of This Court in Maggio v. Zeitz, 333 U.S. 56 (1948), or the Second Circuit in NYSARC v. Carey, 631 F.2d 162 (2d Cir. 1980)

The Third Circuit correctly applied this Court's holding in Maggio v. Zeitz, 333 U.S. 56 (1948). Petitioners erroneously ignore the obvious distinction between physical impossibility to comply with a court order and legal obstacles to compliance. This Court supported the defense of imposibility in Maggio, where a literal physical impossibility barred compliance with a District Court order.* However, the Maggio holding does not extend to the defense of legal impossibility.**

Where a defendant's compliance with a court order conflicts with existing law, the defendant's duty to comply is not relieved automatically. An order issued by a court with proper jurisdiction must be obeyed "until it is reversed by orderly and proper proceedings." United States v. United Mine Workers of America, 390 U.S. 258, 293 (1947). State law prohibition against compliance with remedial orders "cannot survive the command of the Supremacy Clause of the United States Constitution"; even erroneous orders must be obeyed while they remain in effect. State of Washington v. Washington State

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* This Court vacated a civil contempt order which required the president of a bankrupt corporation to comply with a district court order to turn over merchandise which the president did not possess. Maggio, supra, 333 U.S. at 60.

** In fact, the Commonwealth was physically able to comply with the District Court order to fund the Master's office; it paid $1,200,000 to the District Court in civil fines during the 1981-82 fiscal year.

Commercial Passenger Fishing Association, 443 U.S. 658, 695 (1979). Maggio does not permit state officials to circumvent a federal court order on the excuse that state law bars compliance.

Petitioners seek to foment a conflict with the Second Circuit's decision in NYSARC v. Carey, 631 F.2d 162 (2d Cir. 1980). In NYSARC, the District Court held New York Governor Hugh Carey in contempt for failing to fund a review panel for Willowbrook as required by a consent judgement. The Second Circuit relieved the Governor of contempt because the consent judgement specifically subjects the state's compliance mechanism "to any legislative approval that may be required" and because "Governor Carey had acted entirely in good faith."* Id. at 163, 164.

Neither fact exists here. The orders below were not explicity subject to approval by the Pennsylvania legislature. The contemnor did not act in good faith to comply with the orders. 37a. Indeed, Secretary O'Bannon was found to have acted in bad faith. Id. The Third Circuit is thus not in conflict with the Second Circuit.

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* The Second Circuit conceded:

"The Governor has done all in his power to make specific budget requests to the Legislature to obtain the appropriation....Despite the Governor's request, the Legislature specifically deleted the entire $342,000 item." Id. at 163.

G. There Is No Conflict With State Law

Pennsylvania law supports -- it does not conflict with -- the decisions below. Where state officials "neglect or refuse" to provide funds, courts have the power to "direct payment therfor out of the public treasury." Leahy v. Farrell, 66 A.2d 577,579,362 Pa. 52 (1949).

Petitioners erroneously contend that they are powerless to expend any funds absent specific appropriations. The two cases on which Petitioners rely (Shapp v. Sloan, 480 Pa. 449, 391 A.2d 595 (1978) aff'd, 440 U.S. 942 (1979) and Burd v. Commonwealth, 443 A.2d 1197 (Pa. Commonwealth Ct. 1982)) do not support this contention.

Shapp concerns the authority of the state to appropriate federal funds to pay the expenses of the office of the Special Prosecutor. Shapp poses no conflict between federal and state law. Id at 606.* There is no question of federal supremacy in Shapp because there is no federal court order.

In Burd, a federal court ordered the state transportation department to fund an auto emission inspection program. The Pennsylvania Legislature responded to the order by passing a bill which prohibited the department from spending any money to implement that program.

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* To the contrary, federal and state authorities share a common goal: "The federal legislation in question encourages state control of these programs, control sought by the state." Id. at 606.

The Pennsylvania Commonwealth Court relieved PennDot of its duty to fund the inspection program on the grounds that "PennDot cannot spend money it does not have." Id. at 1199. Such is not the case here. Petitioners have the money to fund the master. Indeed they have paid $1,200,000 for the master in the form of coercive fines.

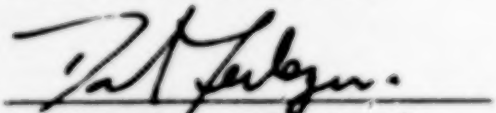
State law does not bar Petitioners from funding the master out of general appropriations to the Department of Public Welfare, such as has been the practice from 1977 to 1981. Neither legal nor physical obstacles stand in the Petitioners' path; only bad faith and disrespect for established judicial procedure hinder their compliance with the District Court orders.

By relying on the groundless defense that state law prohibits them from expending the funds ordered by the District Court, Petitioners have sought to short circuit the judicial process by ignoring established procedural remedies and resorting to inappropriate self-help. Contempt is not a substitute for appeal. The Third Circuit was correct in denying the Petitioners a free hand to rewrite the rules of civil procedure to remedy their self-imposed dilemma. This Court should discourage parties from substituting contempt for appeal by refusing to review Petitioners claims.

III. CONCLUSION

For the foregoing reasons, Respondents respectfully request that a writ of certiorari to review the judgment of the Court of Appeals for the Third Circuit in this case be denied.

Respectfully submitted,



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October Term, 1981

No. 81-2363

PENNHURST STATE SCHOOL AND HOSPITAL, et.al.,

v.

TERRI LEE HALDERMAN, et.al.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

The respondents, Terri Lee Halderman, et.al., respectfully ask leave to file the attached Response to the Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit without prepayment of costs and to proceed in forma pauperis pursuant to Rule 46.

Motion for leave to proceed in forma pauperis with respect to No 81-2101 was granted by the Court on June 21, 1982.

Respondents' affidavit in support of this motion is attached hereto.

David Ferleger, Esq.
37 South 20th Street
Suite 601
Philadelphia, PA 19103

(215) 567-2828
Counsel for respondents Halderman, et.al

August 6, 1982

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

No. 81-2363

PENNHURST STATE SCHOOL AND HOSPITAL, et.al.,

Petitioners,

v.

TERRI LEE HALDERMAN, et.al.,

Respondents

AFFIDAVIT

I, David Ferleger, Esq. being first duly sworn, depose and say that I am counsel for the respondents Terri Lee Halderman, et.al.* in the above-entitled case; that in support of their motion to proceed in opposition to the petition for a writ of certiorari without being required to prepay fees, costs, or give security therefor, I state that because of their poverty they are unable to pay the costs of said proceedings or to give security therefor; and that they are entitled to a denial of the writ.

Respondents are a class of mentally retarded persons either confined in institutions or receiving services in

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* The motion and this affidavit are filed on behalf of respondents Terri Lee Halderman, Larry Taylor, Kenny Taylor, Robert Sobetsky, Theresa Sobetsky, Nancy Beth Bowman, Linda Taub and George Sorotos Caramfa only.

the community. Other than plaintiff George (Sorotos) Caranfa, all named plaintiffs are institutionalized. Because of their disability and the failure of the petitioners to provide them with adequate habilitation, they are unable to provide counsel with the detailed financial information required to execute affidavits in support of their motion to proceed in forma pauperis.

The responses which I have made to the questions and instructions below relating to respondents' ability to pay the costs of responding to the petition for the writ of certiorari are true and correct to the best of my knowledge, information, and belief.

1. Are you presently employed?

All of the original named plaintiffs, with the exception of plaintiff George (Sorotos) Caranfa, are currently residents of institutions for the mentally retarded. Any employment consists of sheltered workshop employment, which provides insufficient income for the support of plaintiffs/respondents.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

I am aware of no source of income to the named plaintiffs other than Social Security benefits. Plaintiff George Caranfa currently receives $297.10 per month in Supplemental Security

Income (SSI). The institutionalized named plaintiffs receive no more than $25 per month in SSI benefits.

Until this time, the costs of this action have been defrayed by donations and grants from private foundations. These sources of revenue are no longer available to respondents, thus necessitating this motion.

3. Do you own any cash or checking or savings account?

I am aware of no such accounts beyond those maintained by the institutions for their residents or in the community for the purpose of teaching money management skills.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

No.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

No dependents are known to counsel.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 5th DAY OF Aug 1982

Notary Public

LIONEL HUDELMAN
Notary Public, Phila., Phila. Co.
My Commission Expires Dec. 17, 1984

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(215)567-2828

Counsel for Repsondents